

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (LODGING) NO.2089 OF 2005**

Juhu Beach Khadye Peye Vikrete  
Co-operative Society Ltd.

....Petitioners.

Versus

State of Maharashtra & Ors.

....Respondents.

Mr.Anand Grover with Mr.R. U. Singh i/b Mr.Prakash L. Mahadik for  
the Petitioners.

Mr.K. R. Belosay, Assistant Government Pleader for Respondent  
Nos.1 to 3.

Ms.Shobha Ajitkumar for Respondent Nos.4 and 5.

Mr.J. P. Cama, Senior Advocate with Mr.J. S.Saluja i/b M/s.M. V. Kini  
& Co. for Respondent No.6.

Mr.Shiraj Rustomjee i/b Pravin Mehta & Mithi & Co. for the Petitioner  
in Writ Petition No.3000 of 2002.

**CORAM : DALVEER BHANDARI, C.J. &**

**S.J. VAZIFDAR, J.**

**DATE : 29TH SEPTEMBER, 2005.**

**ORAL JUDGMENT :** (Per S.J. Vazifdar, J.)

1. The stretch of beach at Juhu, known as the Juhu beach is

one of the finest beaches in the city of Mumbai. The beach unfortunately went from bad to worse over the years as a result of encroachments and various unregulated and even illegal activities being carried out thereon. It was being rapidly polluted. A Division Bench of this Court inter-alia by an order dated 28<sup>th</sup> June, 2004 sought to arrest the rapid deterioration of the beach. If we may say, with great respect to their Lordships, it was as a result at their intervention that improvements have already been made and the beach is well on its way to being restored to the condition it ought always to have been in. Several attempts by the parties including the Petitioners, to challenge this order have met with failure, both before this Court and the Supreme Court.

2. We may mention at the out-set that the grievance of the Petitioners stands covered by the said order which has been confirmed by the Supreme Court. This is yet another attempt to stall the implementation of the scheme sanctioned by the said order.

3. The members of the Petitioners' society carried on business on the beach from their respective stalls. Mr. Grover, the learned counsel appearing on behalf of the Petitioners stated that there are

about 80 such stall owners. Respondent Nos.2, 3, 4, 5, 6 and 7 are the Deputy Director of Town Planning, Collector, Mumbai Suburban District, Municipal Corporation of Greater Mumbai, Chief Engineer of the Corporation, Airport Authority of India (AAI) and the Union of India respectively. Respondent Nos.8 to 12 are the citizens and the members of the Juhu Welfare Association and certain other organizations.

4. The Petitioners have now challenged one aspect of a modification dated 30<sup>th</sup> June, 2005 to a development plan dated 19<sup>th</sup> March, 1993. There is no dispute regarding the area of each stall. The dispute pertains to the aggregate area, open and enclosed by the stalls. The area claimed is 2600 sq. mtrs. The area determined by the impugned notification is 1100 sq. ft. The modification itself was pursuant to and in implementation of the scheme and the said order. The Petition is unfounded. It is contrary to the order of this Court, confirmed by the Supreme Court. Before dealing with Mr.Grover's contention, it is necessary to set out a few facts relevant only to the Petitioners' case.

5. By February 1999, the licence granted by AAI in favour of

the Petitioner's members/stall holders, had expired. On 1.11.2002 AAI served notices for eviction on the stall holders. As observed in the order dated 28.6.2004, which we shall refer to in detail later, the stall holders continued thereafter without any valid licence in their favour.

6. Respondent Nos. 8 to 12 filed Writ Petition No.3000 of 2002. This Writ Petition was finally disposed of by the said order dated 28.6.2004. The Petitioners therein sought the implementation of a scheme framed by one P.K. Das in consultation with Citizens Group and the concerned authorities, who adopted the same. The petition was filed as despite the scheme being adopted, no action to implement the same was taken.

7. By an order dated 5.2.2003 a Division Bench of this Court, presided over by C.K. Thakkar, CJ (as His Lordship then was) restrained AAI from renewing the licences. By a further interim order dated 19.3.2003 the same Court, inter-alia, issued directions for the implementation of the scheme including relocating the stall holders as per the plans under the scheme. The Petitioners in the present Writ Petition challenged the order by filing a Petition for Special Leave

before the Hon'ble Supreme Court of India, which disposed of the same by an order dated 20.11.2003 directing this Court to dispose of the Petition after hearing the parties including the stall holders. The order of this Court dated 19.3.2003 was modified only as far as paragraph 6(i) thereof was concerned, directing removal and relocation of the stall holders was concerned, in terms of the order of the Supreme Court dated 21.4.2003.

8. The Petitioners thereafter filed an affidavit in reply dated 19.7.2003 in Writ Petition No.3000 of 2002. In view of the contention raised by Mr. Grover before us, it is necessary to refer to paragraph 7 (i) thereof. We will state the significance of this contention qua the present Writ Petition a little later. Paragraph 7(i) of the said affidavit reads as under :

“7(i) There is a statue of Chhatrapati Shivaji Maharaj near the proposed site where the stalls are proposed to be relocated. In view of the aforesaid chaotic conditions created on account of shortage of space, the people might dispose of the refuse/garbage/leftovers of eatables near the statue. This may create another law and

order problem due to the sentiments of the people of Maharashtra for the said statue and the same has been accepted by the Airport Authority in para 19 of its Affidavit.”

9. We referred earlier to the observations of the Division Bench that the stall holders licences had expired long ago and they had been continuing their business without any licence in their favour. Mr. Grover however submitted that the licences were, in fact, extended. He relied in this regard upon an order dated 21.6.2004 passed by the District Collector. Far from supporting the Petitioners' case, this order is, in fact, against the Petitioners. The extension of the licence by the said order was only for a particular purpose. It appears that the Petitioners' members were in arrears for about 23 years regarding the revenues of the Government. In fact, it was admitted before us that the arrears today are over Rs.25,00,000/- in respect of revenue alone. With a view to recover the arrears of lease rent and in view of the fact that the Petitioners were continuing as a result of the aforesaid orders, the said order dated 21.6.2004 came to be passed. Clauses 5 to 9 of the terms and conditions therein read as under :

**“Terms/Conditions :-**

- 5) The renewal of the lease is of the lease is of provisional nature. This has been done with a view to recover the revenue of the Government in arrears as lease rent for a long time.
- 6) The period of the lease will be subject to the final decision of the Hon. Supreme Court and the Hon. High Court and the Government.
- 7) The final decision in the case of beautification of Juhu and Public Interest Litigation filed in the Mumbai High Court will be binding on the society.
- 8) In the present case whatever is the final decision in the file writ petition no.613/1991, 413/1996, 2797/1988, SLP 15/47/98 and writ petition no. 3000/2002, the same will be binding on the Juhu Beach; Khadya Peye Vikrete Co-op. Society Ltd.
- 9) The final decision on the petitions filed in the Hon. Supreme Court and Hon.

High court shall be binding on them. Similarly, the number of stall holders shall not increase beyond 63 and the authorized stall holders shall not carry out any permanent construction.”

10 [A]. This brings us to the said order dated 28.6.2004. The said order refers to the previous orders of this Court and to the steps taken towards the implementation of the scheme. The Petitioners were also represented and heard on that date. The various contentions raised by the Petitioners were rejected. It is important to mention, that the Petitioners' contention that they ought not to be relocated as per the plan, was expressly rejected.

[B] The contention raised by the Petitioners in the affidavit dated 19.7.2003, which we have extracted above, was also raised on behalf of another party viz. Chhatrapati Shivaji Smarak Samitee.

Dealing with this contention, the Division Bench held as under :

“8. Mr. Diwan appearing for Chhatrapati Shivaji Smarak Samitee contented that the location of the proposed Food Plaza ought to be changed having regard to the fact that it is located within close proximity of

Shivaji statue. According to Mr. Diwan the stalls can be relocated on either side of the beach. We are unable to agree with Mr. Diwan. The Committee has agreed to maintain a distance of at least 60 ft. from the fence around the statue of Shivaji, and the area around the statue will be developed as a garden and the ramp opposite Shivaji statue which goes on the beach will be kept open. We may add that at the moment, the area surrounding the statue is extremely unsanitary and chaotic. Vehicles are parked around and next to the statue. In fact this position will improve once the scheme is implemented.”

[C]. Thereafter, the Division Bench passed inter-alia the following directions in paragraph 12 :

“12. In the result, in view of the foregoing discussion, we issue the following directions :-

2. Respondent Nos. 1 and 2 have stated that the State of Maharashtra and the Mumbai Municipal Corporation will take the necessary action to make a modification to the development plan under section 37 of the MRTP Act so as to permit the re-location of the stalls on the area adjacent to Palm Grove Hotel presently designated for car parking under

the Development Plan. Respondent Nos. 1 and 2 should take this action as expeditiously as possible, and, in any event, within a period of 8 weeks.

3. The re-location of the existing stalls from the AAI portion of the beach as well as the Collector's portion of the beach shall be completed within a period of 12 weeks from today.
4. The stall – holders who are desirous of obtaining stalls in re-located area shall intimate their willingness in writing to the Committee along with their undertaking to abide by the terms and conditions of the Scheme within four weeks. Each stall holder shall deposit with the Collector a sum of Rs.35,000/- towards the cost of the new stall. The stall holder who fail to communicate their willingness shall forfeit their right for re-allotment and shall be liable to be evicted by the concerned authorities.
7. No sale of eatables or hawking in any form should be permitted outside the Food Plaza shown in the plans under the Scheme.
9. No stall holder should place any tables, benches, stands or any other such items outside his stall in the Food Plaza or on any part of

the bench.

11. The accesses should be kept free of encroachments and no hawking should be permitted therein except as shown in the plans under the Scheme mentioned above.
12. Respondent Nos. 1 to 3 and all other concerned authorities and agencies should take immediate action to demolish/remove all remaining encroachments, unauthorised development, or extension of private properties/property boundaries and dumped material on the beach as per the surveys conducted by the office of the 1<sup>st</sup> Respondent and the Monitoring Committee.”

11. The Petition for Special Leave to Appeal against the said order dated 28.6.2004 was dismissed by an order dated 2.8.2004. The order dated 28.6.2004 has thus attained finality.

12 (a). It is important to note that the Petitioners filed Notice of Motion being Notice of Motion No.424 of 2004 for extension of time for furnishing the undertakings and depositing the amount of Rs.35,000/- in accordance with paragraph 12(4) of the order dated 28.6.2004 extracted above. The Petitioners stated in their affidavit in

support of the Notice of Motion that they were willing to abide by the terms and conditions of the scheme.

(b). By an order dated 19.8.2004 this Court extended time as prayed for. In prayer (b) of the said Notice of Motion the Petitioners sought an increase in the size of the stalls. The Petitioners however did not press that prayer at the hearing of the Notice of Motion.

(c). Thereafter, the Petitioners filed an undertaking as required by paragraph 12(4) of the order dated 28.6.2004. A copy of one such undertaking was furnished. Clauses 2 and 3 of the undertaking are important and read as under :

“2. I say that pursuant to the order dt. 28.6.2004 passed by the Hon'ble Divn. Bench of Bombay High Court comprising of His Lordship Acting Chief Justice Shri A.P. SHAH and His Lordship Mr. Justice S.U. KAMDAR in Writ Petition No. 2797 of 1988 and Public Interest Litigation No. 3000 of 2002, I hereby give my written willingness for relocation of my Stall to the place decided by the Monitoring Committee and further undertake to deposit the sum of Rs. 35,000/- as is directed by the Hon'ble Court vide Order dtd. 28.6.2004.

3. I hereby undertake that I shall abide each and every terms and

conditions of the Scheme of the Monitoring Committee appointed by the Hon'ble High Court in P. I. L. No. 3000 of 2002 as stipulated in Order dtd. 28<sup>th</sup> June, 2004 passed by the Hon'ble Divn. Bench of Hon'ble High Court in its true meaning and correct sense and shall not commit any breach thereof.”

13. Pursuant to clause 2 of the order dated 28.6.2004 the State of Maharashtra issued a public notice under section 37 inviting suggestions and objections to the proposed modification of the development plan changing the designation of an area around the statue of Chhatrapati Shivaji from that of a parking lot for the purpose of rehabilitation of the stall holders/hawkers.

14. The Petitioners by their letter dated 25.10.2004 raised various objections including that the proposed modification to the development plan of 19.3.1963 would cause a serious problem by relocating and shifting the stalls in the vicinity and surrounding the statue of Chhatrapati Shivaji. They also raised various other objections including that the same would not serve any public purpose and would not be useful and convenient to the public and the Petitioners' members.

15. After considering the objections, observations and suggestions made by various parties, the impugned notice dated 30.6.2005 was issued. Before we deal with Mr. Grover's contention regarding the notification dated 30.6.2005, it is necessary to state that Mr. Grover expressly stated that the Petitioners did not intend pressing the objections to the scheme on the ground that the scheme or any part thereof was in violation of the provisions of the Coastal Regulation Zone Notification. In view of the past conduct of the Petitioners, Mr. Rustomjee, the learned counsel appearing on behalf of the Petitioners in Writ Petition No. 3000 of 2002 submitted that the Petitioners in this petition ought to place the same on affidavit. Mr. Grover, on taking instructions from his clients who were present in Court, undertook to file such an affidavit. However, the affidavit has so far not been filed. In any event, the statement was made, and we accept the same.

16. The only objection raised by Mr. Grover before us, was that whereas proposed Modification No.1 contemplated an aggregate area of 2600 sq. mtrs. as being available for all the stall holders, the impugned notification under section 37(2) of the MRTP Act, confined

it to 1100 sq. mtrs. The area of each stall admittedly has remained the same. It is the open area around all 80 stalls that is now in dispute. As we shall demonstrate shortly, contention has been raised only as a ruse to avoid the implementation of the scheme. The aspect is covered by the order dated 28.6.2004.

17. Modification No.1 as contemplated read as under:

“Modification No.1. Part designated as Parking lot from the said designation and reservation of extension to parking lot extending over an area admeasuring about 2600 sq. mt forming part of the said reservation no.1 to be deleted and the entire area so deleted as aforesaid be reserved for “Rehabilitation of Hawkers and Stall Holders”.

The modification as sanctioned by the impugned order reads as under :

“Modification No.1 : The part of designation of “Parking Lot” and a part of the reservation of “Extension of Parking Lot” fronting Chhatrapati Shivaji Maharaj Statue marked A-B-C-D- on plan annexed hereto, admeasuring about 1500 sq.

mt is deleted and same is to be developed for Garden. Further the area marked B-E-F-C on plan annexed hereto, admeasuring about 1100 sq. mt is deleted and the same is reserved for "Rehabilitation of Hawkers/Stall Holders" of the main Juhu Chowpatty."

18. Mr. Grover's submission is unfounded. The modification as granted by the impugned order is not only in consonance with law but in accordance with the order of this Court dated 28.6.2004 which was confirmed by the Supreme Court. In fact, there was no reduction of the aggregate area. Admittedly, there is no reduction of the area of each of the stalls. The Petitioners have merely and, if we may add, unfairly sought to take advantage of the fact that the proposed modification referred to 2600 sq. mtrs. being the aggregate area for the stalls. The same was contrary to the order dated 28.6.2004. We have already set out paragraph 8 of the order dated 28.6.2004. The order records that in view of the objections to the location where the stalls were to be relocated, around the statue of Chhatrapati Shivaji at distance of "at least 60 ft. from the fence

around the statue of Shivaji was to be maintained and the area around the statue will be developed as a garden". The platform on which the statue stands is 10 ft. x 10 ft. Thus, in each direction the area to be kept open would be 60 ft. + 10 ft. + 60 ft. equal to 130 ft. Thus, the area around the statue admeasures 130 ft. x 130 ft. equivalent to 16,900 sq. ft. or about 1500 sq. mtrs. This is the exact area of 1500 sq. mtrs., referred to in the impugned notification which was deleted from the plan and provided instead that the available area to the stall holders would be 1100 sq. mtrs. by changing the previous reservation and modifying the same for "Rehabilitation of Hawkers/Stall Holders". The Petitioners were aware of the new location. They took an objection to the new location in paragraph 7(i) of their affidavit dated 19.7.2003 which we have reproduced above. They knew the total area around the statue. The Division Bench inter-alia in view of the Petitioners' objections regarding the location been too proximate to the statue of Chhatrapati Shivaji, ordered the distance of 60 feet being kept from the fence around the statue. The Petitioners were therefore aware that the area of 1500 sq. mtrs. on account thereof would not be

included for them. The order has attained finality. This Writ Petition is thus a mere ruse to derail the scheme.

19. There were certain disputes between the AAI and the Petitioners regarding the amount payable in respect of the use of the stalls at the relocated area. That is an issue which goes beyond the scope of this petition. Further it is an issue which cannot possibly be decided in a Writ Petition.

20. The petition is therefore without any merit.

In the circumstances, the petition is dismissed. There shall however be no order as to costs.

**CHIEF JUSTICE**

**S. J. VAZIFAR, J.**